

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-335

In Regard to the Matter of:

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

ANTHONY HUSSIE

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * *

FRIDAY, JANUARY 9, 2009

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

Transcript of proceedings in the above matter taken by Theresa O. Mastroianni, Certified Court Reporter, license number 30X100085700, and Notary Public of the State of New Jersey at the United States District Court House, One Gerry Plaza, Camden, New Jersey, 08102, commencing at 10:00 AM.

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JUDGE BISSELL: I am reopening proceedings in the case of Anthony Hussie, docket number 08-335.

I realize that evidence was presented over several sessions in this matter, both in terms of exhibits and testimony. I have examined all of it in the last couple of days in order to reach this decision.

This opinion/report is being issued pursuant to the directives of the Order of Reference to a Special Master and the Special Master's Agreement and the guiding principles of law which underlie this decision to be applied to the facts upon which it is based as set forth in the jury instructions in the Walker and Mejias jury charges to the extent applicable to the allegations of Mr. Hussie.

As finalized after review under Local Civil Rule 52.1, this transcript will constitute the written report required under paragraph seven of the Order of Reference to a Special Master.

A brief summary of Mr. Hussie's allegations regarding his injuries appeared contemporaneously with the alleged event on August 11, 1997. He alleges that he was injured upon

extraction from his cell for movement of the occupants of Trailer Number Two to the gym on that date.

Upon arrival at the gym it was evident that he had sustained a head injury, which I'll describe in greater detail later on, and was asked about it by a Sergeant C.K. Smith, Junior. Sergeant Smith was in charge of the SOG unit that was monitoring the gym on that day, but he also knew Mr. Hussie, also known from time to time as Kenny Philips, from having known and seen him at a different facility to which Mr. Smith was normally assigned. My recollection is Garden State or Yardville as it's sometimes called.

And so Mr. Smith had a discussion with Mr. Hussie about it and Mr. Smith entered a contemporaneous report with regard to Mr. Hussie's allegations. It's brief and it states in its substantive section relating to Mr. Hussie's statement, and I quote: "Inmate entered the gym with slight abrasion to his forehead. Inmate alleges he was pushed into the wall locker by an officer. Inmate seen by medical staff and IA. Inmate escorted to IA for interview and returned to the gym."

We have a couple of interesting points

here that in my view lend a substantial amount of credibility to Mr. Hussie's testimony and the description of the injuries which he incurred. First, he made a contemporaneous complaint consistent with what he has asserted throughout this matter. And we have a number of reports of investigations by Internal Affairs, Officer Guerin in particular, and other occasions in which Mr. Hussie was interviewed on this topic and he has been consistent in connection with those injuries throughout. Nor has he endeavored to embellish or exaggerate in any way contrary to testimony which I've often received in other proceedings.

I'm going to take a moment to read from his testimony with regard to the events. It's somewhat lengthy, but just as easy to read as it would be to try to summarize it.

In this case I'm reading from the transcript of February 29th, 2008 when he testified here.

Beginning at page 102, line seven and continuing intermittently with certain gaps from time to time to a concluding segment that ends at page 123, line five.

At this point he has described, first,

what happened to his roommate and how he was processed and the questioning then picks up at that point. We're in the morning of August 11, 1997.

"Question: Okay. You were next?

"Answer: Yes.

"Question: What happened?

"Answer: Pulled me off the bed the same way.

"Question: Did he give you any instructions prior to the time he pulled you off the bed?

"Answer: Get up, that was it.

"Question: Did he tell you to get up before he pulled you off the bed or after?

"Answer: After.

"Question: Did he give you any instructions before he pulled you off the bed?

"Answer: No, sir.

"Question: Okay. When you were pulled off the bed, were you injured in any way as a result of being pulled off the bed?

"Answer: No, sir.

"Question: Okay. So then what happened next, what did he tell you to do?

"Answer: After he told me to get up, I

stood up. My face was still -- my back was towards him, my face was still towards the locker. I'm looking in the cubicle now.

"Question: Okay.

"Answer: And the night stick with his hand right next to the bed, the top bunk, let me show you again, right next to the top bunk, the bunk is basically level with my eyes. He got right between the two beds there is a wall locker, my neck and the night stick was between the wall locker and the top bunk. And he asked me did I have a fucking problem, excuse my language. He asked me did I have a fucking problem and I replied no.

"Question: Okay.

"Answer: And then after that, I made -- I was still -- pulled me from there and I was still face towards the wall locker, I mean he told me to take my shirt off, took my shirt off and everything, but before I got -- my shirt was off, before I could take my boxers off, my head was slammed up against the wall locker which it got ridges on it and, I mean, my head get injured.

"Question: What do you mean slammed up against the wall locker?

"Answer: He had the back of my neck, I

mean still with the baton. He had the back of my neck, he pushed my head into the wall locker twice, slammed it, boom, boom. And he told me to turn around. When I turned around, he told me open my mouth and I opened my mouth -- before you turn around, you got to do the regular bend over, you have to squat, lift up your leg and everything. And then told me to turn around, open my mouth. I opened my mouth, make sure I didn't have no shanks or dentures or anything in my mouth and everything. Then he told me to get dressed. I got dressed in front of him. Told me to put my head down and go out the door, put my hands behind my back with the cuffs on and go out the door.

"Question: Okay. Now, when your head slammed against the locker, you said he pushed you against the locker twice?

"Answer: Yes.

"Question: Okay. Were you injured as a result of that?

"Answer: Yes.

"Question: How?

"Answer: It was my head -- when I say bleeding, it bust open. As a result of it busting open, it was bleeding. Not bleeding running down my

face or anything, but as a result of the scar, it was bleeding."

I might note at a later point he demonstrated the location of a scar, not a large one to be sure, but nevertheless consistent with his testimony and in the same area of his head as I recall in the vicinity of the hairline.

Returning now to additional testimony on this subject. Now, relating to his discussions with Sergeant Smith about the event.

"Question: Okay. Now, did Sergeant Smith tell you to go back of the gym before you sat down or after you sat down?

"Answer: Before I sat down.

"Question: Okay. Did you follow his orders?

"Answer: Yes.

"Question: Did he tell you anything other than -- else other than just go to the back of the gym?

"Answer: No.

"Question: Okay. And did he come and talk to you?

"Answer: He -- everything that he asked me, he asked me before he sent me to the back

of the gym.

"Question: What did he ask you?

"Answer: He asked me what happened.

"Question: And what did you tell him?

"Answer: I told him I was assaulted by
one of the SOG members.

"Question: Okay. And did he escort
you -- did he take you personally to the back of the
gym?

"Answer: He walked right alongside of
me and told me to sit right there back of the gym
where the gates is at.

"Question: Did Sergeant Smith abuse
you in any way?

"Answer: No."

We'll now skip some intervening
material, but resuming in this case at page 115.

"Question: Okay. How long did you sit
there?

"Answer: About ten minutes.

"Question: And what happened?

Answer: A camera came back with the
nurse. They treated -- they treated my head, then
IA took me up out of there.

"Question: Okay. How long did you

have to wait in the back of the gym before the nurse arrived?

"Answer: About ten minutes.

"Question: Okay. And when the nurse arrived, did she come alone or was she with anyone else?

"Answer: No, she was with another nurse and the cameras. The IA do it with the cameras. They had cameras.

"Question: Is that three people?

"Answer: Yes.

"Question: Okay. And did you talk to them at all?

"Answer: She asked me what happened. And I just told her my head been injured, that was it. And she done it up and everything, asked me was I allergic to any medication and that was it.

"Question: Okay. And were you ever removed from the gym?

"Answer: Yes.

"Question: Were you ever taken to the infirmary?

"Answer: No.

"Question: Okay. How long after the nurse treated your head -- and by the way, I'm sorry,

can you tell me exactly what she did? Did she give you any medication? Did she put a Band-Aid on it, what did she do?

"Answer: She put some -- not stitches, but -- like a little -- they strips and whatnot. She put it on there and put some ointment stuff on there."

Final segment on this subject starting at page 122.

"Question: Now, did you ever receive any more treatment for your -- the injury to your scalp?

"Answer: Yes.

Question: When.

Answer: It was a couple days later after. It was a couple days later.

"Question: And what happened -- what type of treatment did you receive?

"Answer: They came in -- they like clean and bandage -- the nurse came in and clean the bandages.

"Question: Came in where?

"Answer: To Trailer Two.

"Question: Okay. But you weren't taken from the Internal Affairs office to the

infirmary?

"Answer: No, I wasn't taken, no.

"Question: Okay. So that on the day that your trailer was searched, the only treatment you received was from the nurse in the gym?

"Answer: In the gym, that is correct."

Now, the medical records characterize the injury observed on Mr. Hussie's head as a "superficial abrasion". I find, frankly, that's an understatement and that the injury was slightly more serious than that, although not very serious. It did result in some residual swelling and some headaches. However, they were not severe and not lengthy. The swelling was in place for approximately a month or two, but hardly aggravated and without any sequential injuries attributable to it. There were some headaches which I think as a layperson he was able to attribute to the event, but none that were either severe or prolonged as I find, given the nature of the injury and the amount of force employed.

I find that, based upon the facts as set forth above, there was, indeed, excessive, unnecessary and sadistic force imposed upon Mr. Hussie consistent both as a matter of fact and law with the definitions of the use of excessive force in

this Eighth Amendment context as reflected in the jury instructions.

There was absolutely no necessity whatsoever or any reason of any kind for the officer in question just to bang Mr. Hussie's head against the wall of his locker. The fact of a serrated vent does, indeed, lend further credence to the fact of at least a slight cut, as Mr. Hussie described it. And as I said, there was no reason to impose any on-the-spot discipline at the time nor was he in any way resisting or disobeying orders given to him in connection with getting undressed as a prelude to his exit from the cell.

However, in light of the fact that the striking of Mr. Hussie was neither prolonged nor repeated, while actionable for compensatory damages, I do not find this assault visited upon him rose to the level of being so egregious as to support a claim for punitive damages. I make that finding.

Finally, although not every item of evidence has been discussed in this opinion/report, all evidence presented to the Special Master was reviewed and considered; including, as I've said, evidence introduced over several sessions subsequent to Mr. Hussie's testimony.

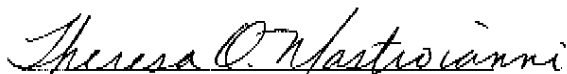
I find that the injury inflicted here is actionable. I find that it was not severe and was quickly and readily treated without any sequelae other than modest swelling and headaches, both of which subsided. I do not find that there is any permanency involved in this matter.

Accordingly, I recommend in this report that the district court enter an award of compensatory damages in the amount of \$2,500 in Mr. Hussie's favor.

C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



Theresa O. Mastroianni, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. XI0857
Date: January 15, 2009

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